

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

WP(C).No. 34851 of 2007(Y)

AGAINST THE ORDER IN EA 822/07 IN EP60/07 IN
OS.683/2001 of I ADDL.M.C., NEYYATTINKARA

.....

PETITIONER:

V.MOHANAKUMAR,
KAVARATHALA VILA VEEDU,
THALAYAL DESOM, ATHIYANNOOR VILLAGE.

BY ADV. SRI.R.V.SREEJITH

RESPONDENT:

G.KESAVAN PILLAI,
PAZHAVOOR VEEDU,
VENPAKAL DESOM,
ATHIYANNOOR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

M.N.Krishnan, J.

=====

W.P(C).No.34851 of 2007

=====

Dated this the 28th day of November, 2007.

JUDGMENT

This Writ Petition is preferred against the order of the First Additional Munsiff, Neyyattinkara in E.A.No.822 of 2007 in E.P.No.60 of 2007 in O.S.No.683 of 2001. It was an application filed by the judgment debtor to review the order of attachment of his salary at the rate of Rs.1,000/- per month.

2. Heard learned counsel.

3. It is seen from the judgment of the court below that the gross salary is Rs.11,336/- and basic salary is Rs.8,460/-. Deductions from his salary are Rs.1,091/- towards P.F., Rs.195/- towards L.I.C. and Rs.50/- towards Welfare Fund. The other deductions are Rs.6,000/- towards co-operative recovery and Rs.1,800/- towards court recovery. Therefore, it is contended that there is no attachable salary, if Section 60 of C.P.C. is applied.

4. This Court in the decision reported in **Sasidharan** v. **K.C.T.S.S. Sangam** - 1994 (1) K.L.T. 429 held that the Dearness Allowance, C.C.A. and H.R.A. are exempt from attachment. This Court also held that deductions to be made are not exempt from attachment and it is only the amount in deposit that is not attachable. Therefore, even though the gross salary is Rs.11,336/- only the actual pay can be taken which is Rs.8,460/-. Out of Rs.8,460/-, first Rs.1,000/- has to be deducted and only 1/3rd of the balance is attachable. If it is calculated, the attachable salary will come to Rs.2,486/-. Deductions towards P.F., L.I.C., etc. cannot be exempted or excluded. Similarly the amount recovered by the co-operative Society also cannot be excluded. But there is Rs.1,800/- towards court recovery. This was not correctly considered by the court below. One has to bear in mind that the total attachable salary of the writ petitioner is only Rs.2,486/- and when there is already an attachment of Rs.1,800/- only the balance can be ordered to be attached and no further amount. Therefore, if Rs.1,800/- is deducted, then the attachable salary will be Rs.686/-.

5. Therefore, the Writ Petition is disposed of whereby the attachment of the salary per month is reduced from Rs.1,000/- to Rs.686/- per month and the court below is further given a direction that the attachment shall be for a period of 24 months and not thereafter.

With the above modifications, the Writ Petition is disposed of.

M.N.Krishnan,
Judge.

ess 28/11